

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ZAMEER RIAZ AZAM,

No. C 05-1627 MHP (pr)

Plaintiff,

**ORDER GRANTING SUMMARY  
JUDGMENT FOR DEFENDANTS**

v.

COUNTY OF ALAMEDA; et al.,

Defendants.

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**INTRODUCTION**

Zameer Riaz Azam, a California prisoner at Folsom State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983, alleging that his constitutional rights were violated during child dependency proceedings in Alameda County. This case is now before the court for consideration of defendants' motion for summary judgment. The court will grant summary judgment because the individual defendants are entitled to absolute immunity for their alleged conduct and because there is no evidence supporting Azam's Monell claim against the County defendant.

**BACKGROUND**

A. Azam's Current Incarceration

Azam is now in Folsom State Prison serving a 12-year prison sentence imposed after his convictions for kidnapping, inflicting corporal injury on a cohabitant, making criminal threats, attempting to induce false testimony, and disobeying a written court order. See Def. Request For Judicial Notice, Exh. A (opinion affirming judgment of conviction in People v. Azam, 2006 WL 1756842 (Cal. Ct. App. 2006)). The California Court of Appeal recounted

1 Azam's repeated threats and acts of violence toward his then-girlfriend Jennifer Bascom  
2 ("Jennifer"), who was also the mother of his child, Alina Bascom ("Alina"). The state court  
3 particularly described the beating and threats by Azam on August 26, 2003, that occurred in  
4 front of 2-year old Alina and 7-year old Nicholas Bascom ("Nicholas") and resulted in a trip  
5 to the hospital for Jennifer. *Id.* at \*1. That court also described Azam's threatening behavior  
6 toward Jennifer on August 30, 2003, trying to get her to change her story about the events of  
7 August 26, 2003 so the criminal charges would be dropped. According to the California  
8 Court of Appeal, the violence culminated on November 1, 2003 when Azam became angry  
9 about an e-mail Jennifer had sent to a friend:

10 Defendant [i.e., Azam] hit the victim [i.e., Jennifer] on both sides of the head and in  
11 the face because he was convinced that she was cheating on him. He grabbed her by  
12 the neck and threw her over a room divider, then pulled her by her hair into his  
13 bedroom, where he punched and slapped her in the face and kicked her legs. He  
14 followed her into the bathroom and pushed her into the glass shower door that  
15 shattered in pieces. He continued to punch and slap her, and at one point took out a  
16 knife and told her how easy it would be to kill her. The victim offered him money and  
17 asked what he wanted. He responded: "Your life." [¶] When defendant let go of her,  
18 the victim ran out the front door and across the street, pounded on a neighbor's door,  
19 and screamed for help. Defendant came up behind her, told her to shut up, and  
20 grabbed her by the hair. When defendant began to run back to his house, the victim  
21 fell and was dragged across the street, a distance of approximately 38 feet. A  
22 neighbor was alerted by the victim's son and called the police. When police arrived,  
23 defendant released the victim and ran back into the house.

24 Cal. Ct. App. Opinion, 2006 WL 1756842, \*2 (footnote omitted).

25 The foregoing information about Azam's criminal case puts the dispute here in  
26 context, as the current action concerns child dependency proceedings conducted for Alina  
27 and Nicholas after the criminal proceedings were commenced against Azam. Azam contends  
28 that various participants in the child dependency proceedings made misrepresentations and  
failed to correct misrepresentations about him. The alleged false statements were that (1)  
Azam had kidnapped Jennifer and Alina on August 30, 2003, (2) Azam had threatened to kill  
the grandmother, Jennifer and Alina, (3) Azam had raped Jennifer in the presence of Alina,  
(4) Azam had beaten and kidnapped Jennifer and Alina, and (5) Alina had stated to  
Pleasanton police, "bad daddy, beat mommy." Azam Decl., ¶ 31. Azam has not provided  
any evidence that any defendant asserted first-hand knowledge of this information; to the

1 contrary, his evidence indicates that the defendants summarized what had been learned from  
2 other sources during the child dependency investigation. Azam Decl., ¶ 31, 38. Alina and  
3 Nicholas apparently remained in the physical custody of their mother.

4 The following facts are undisputed unless otherwise noted:

5 B. The Parties

6 The allegations of the second amended complaint concern events occurring from  
7 December 17, 2003 through July 1, 2004.

8 At the time, Azam was in custody in the Santa Rita facility of the Alameda County  
9 Jail, awaiting trial on domestic violence and other criminal charges. Azam was the biological  
10 father of the 2-year old Alina. He was not the father of the 7-year old Nicholas.

11 Defendant Sherene Somerby was a Child Welfare Worker II in Family Maintenance  
12 for the Alameda County Social Services Agency, Department of Child and Family Services.  
13 Her duties were to ensure the safety and welfare of the dependent minors while they resided  
14 in their parents' care. This included assisting the parents in meeting their case plan  
15 requirements by helping them access services that could strengthen their parenting skills.  
16 Her duties also included drafting Status Review Reports ("SRRs"), which were reviewed and  
17 approved by the appropriate Child Welfare Supervisor. Upon review and approval, the SRR  
18 would be submitted to the juvenile court department of the Alameda County Superior Court.  
19 She was assigned to the Bascom case on or about April 2004.

20 Defendant Kathleen Pacheco was an employee of the Alameda County Counsel's  
21 office. As Deputy County Counsel, Pacheco represented Alameda County Social Services  
22 Agency, Children and Family Services at the December 17, 2003 jurisdiction and disposition  
23 trial and at the July 1, 2004 hearing.

24 Defendant Raquel Lacayo-Valle as an attorney in the Alameda County Public  
25 Defender's Office, Dependency Division. Her involvement in this case was as the attorney  
26 assigned from the Public Defender's office to represent the interests of Alina and Nicholas in  
27 the dependency proceedings. In that capacity, she attended court hearings on June 2, 2004  
28 and on July 1, 2004.

C. The Child Dependency Proceedings

As a result of the domestic violence charges brought against Azam in 2003, the Alameda County Social Services Agency, Children and Family Services ("Social Services") was contacted to investigate matters concerning Azam's alleged abuse of Jennifer and her two minor children, Alina and Nicholas. Social Services employees obtained numerous pages of police reports from the Pleasanton Police Department concerning Azam's treatment of the children and Jennifer. Social Services employees also contacted and interviewed police officers, family members, the children, and Jennifer. The parties dispute whether Social Services employees attempted to contact and interview Azam during the investigation.

After investigating the matter, Social Services filed a Juvenile Dependency Petition. The petition asserted under California Welfare and Institutions Code § 300(b) that both Nicholas and Alina were at risk.

Azam contested the Juvenile Dependency Petition. As a result, a jurisdiction and disposition trial was set for December 17, 2003.

Azam was brought from the county jail and attended the jurisdiction and disposition trial on December 17, 2003. He was represented by Patrick O'Rourke, an attorney experienced in representing parents at such trials. At the completion of the jurisdiction and disposition trial, the court found true the allegations of the Juvenile Dependency Petition as amended. The court took jurisdiction of Nicolas and Alina. This was a determination of their legal status and apparently did not mean that the children were physically removed from their home. See Cal. Welf. & Inst. Code § 300 ("Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court . . .") Following the recommendation of Social Services, the court ordered Nicholas and Alina to be placed in-home with Jennifer. Azam did not appeal this decision.

Defendant Somerby, a Child Welfare Worker II in Social Services, was assigned to the Bascom case on or around April 2004. She prepared the SRR for the June 2, 2004 hearing. Her signature on the SRR was dated May 19, 2004. Somerby Decl., Exh. A, p.13.

1 During the time Somerby was assigned as the Child Welfare Worker for the Bascom case,  
2 Jennifer completed all the requirements of the case plan that had been drawn up for her and  
3 her family – including therapy for her and Nicholas as well as a parenting class.

4 On June 2, 2004, a "six-month family maintenance review" hearing was held. At the  
5 hearing, Somerby recommended to the court that Jennifer be granted full physical and legal  
6 custody of both children and that no visitation be permitted for Azam. Azam's attorney was  
7 present but Azam was not present at the hearing. Because Azam's attorney objected to the  
8 dismissal of Alina's case without a hearing as to the custody order, the court set the matter for  
9 another hearing on July 1, 2004. Nicholas' court dependency was dismissed and Jennifer was  
10 granted sole physical and legal custody with no visitation to the father.

11 At the hearing on July 1, 2004, Azam and his attorney were present, as were  
12 defendant Lacayo-Valle (representing the interests of Alina) and defendant Pacheco  
13 (representing Social Services). Somerby also attended the hearing. At the hearing, an offer  
14 of proof was made that Azam would testify he had participated in various classes while  
15 incarcerated. Much of his class work was irrelevant (e.g., a barbering class, a GED class, an  
16 HIV education class, and a certificate of ministry) to the dependency case plan. See Azam  
17 Decl., Exh. C, 7/1/04 RT 5-7, 16. He did, however, have certificates showing his completion  
18 of a substance abuse program and a domestic violence/anger management program. Id. at 7.  
19 No live testimony was presented. The court adopted Somerby's recommendations and  
20 awarded full legal and physical custody of Alina to Jennifer with no visitation rights for  
21 Azam, and dismissed the dependency proceedings. According to argument at the hearing,  
22 Azam was not forever barred from contact with Alina and could later move under the  
23 California Family Code to regain access to, and custody of, Alina if circumstances changed.  
24 See id. at 12-14.

### 25 VENUE AND JURISDICTION

26 Venue is proper in the Northern District of California because the events or omissions  
27 giving rise to the claims occurred in Alameda County, which is located within the Northern  
28 District. See 28 U.S.C. §§ 84, 1391(b). This Court has federal question jurisdiction over this

1 action brought under 42 U.S.C. § 1983. See 28 U.S.C. § 1331.

## 2 **LEGAL STANDARD FOR SUMMARY JUDGMENT**

3 Summary judgment is proper where the pleadings, discovery and affidavits show that  
4 there is "no genuine issue as to any material fact and [that] the moving party is entitled to  
5 judgment as a matter of law." Fed. R. Civ. P. 56(c). A court will grant summary judgment  
6 "against a party who fails to make a showing sufficient to establish the existence of an  
7 element essential to that party's case, and on which that party will bear the burden of proof at  
8 trial . . . since a complete failure of proof concerning an essential element of the nonmoving  
9 party's case necessarily renders all other facts immaterial." Celotex Corp. v. Catrett, 477  
10 U.S. 317, 322-23 (1986). A fact is material if it might affect the outcome of the lawsuit  
11 under governing law, and a dispute about such a material fact is genuine "if the evidence is  
12 such that a reasonable jury could return a verdict for the nonmoving party." Anderson v.  
13 Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

14 Generally, the moving party bears the initial burden of identifying those portions of  
15 the record which demonstrate the absence of a genuine issue of material fact. The burden  
16 then shifts to the nonmoving party to "go beyond the pleadings, and by his own affidavits, or  
17 by the 'depositions, answers to interrogatories, or admissions on file,' designate 'specific facts  
18 showing that there is a genuine issue for trial.'" Celotex, 477 U.S. at 324 (citations omitted).

19 On issues as to which the moving party bears the burden of proof at trial -- such as the  
20 qualified immunity defense in this case -- he must come forward with evidence which would  
21 entitle him to a directed verdict if the evidence went uncontroverted at trial. See Houghton v.  
22 Smith, 965 F.2d 1532, 1536 (9th Cir. 1992). He must establish the absence of a genuine  
23 issue of fact on each issue material to his affirmative defense. Id. at 1537. Once the moving  
24 party has come forward with this evidence, the burden shifts to the non-movant to set forth  
25 specific facts showing the existence of a genuine issue of fact on the defense.

26 A verified complaint may be used as an opposing affidavit under Rule 56, as long as it  
27 is based on personal knowledge and sets forth specific facts admissible in evidence. See  
28 Schroeder v. McDonald, 55 F.3d 454, 460 & nn.10-11 (9th Cir. 1995) (treating plaintiff's

1 verified complaint as opposing affidavit where, even though verification not in conformity  
 2 with 28 U.S.C. § 1746, plaintiff stated under penalty of perjury that contents were true and  
 3 correct, and allegations were not based purely on his belief but on his personal knowledge).  
 4 Plaintiff's second amended complaint, which superseded earlier pleadings, is not verified and  
 5 is not considered as evidence.

6 The court's function on a summary judgment motion is not to make credibility  
 7 determinations or weigh conflicting evidence with respect to a disputed material fact. See  
 8 T.W. Elec. Serv. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987). The  
 9 evidence must be viewed in the light most favorable to the nonmoving party, and the  
 10 inferences to be drawn from the facts must be viewed in a light most favorable to the  
 11 nonmoving party. See id. at 631.

## 12 DISCUSSION

### 13 A. Absolute Immunity For Individual Defendants

14 The United States Supreme Court has recognized that some officials perform special  
 15 functions which, because of their similarity to functions that would have been immune when  
 16 Congress enacted 42 U.S.C. § 1983, deserve absolute protection from damages liability.  
 17 Buckley v. Fitzsimmons, 509 U.S. 259, 268-69 (1993). This immunity extends to individuals  
 18 performing functions necessary to the judicial process. Miller v. Gammie, 335 F.3d 889, 896  
 19 (9th Cir. 2003). Under the common law, judges, prosecutors, trial witnesses, and jurors were  
 20 absolutely immune for such critical functions. Id. Courts take a "functional approach" to  
 21 the question of whether absolute immunity applies in a given situation, meaning that they  
 22 look to "the nature of the function performed, not the identity of the actor who performed  
 23 it." Buckley, 509 U.S. at 269 (citations omitted); see also Kalina v. Fletcher, 522 U.S. 118,  
 24 125 (1997) ("Our later cases have made it clear that it is the interest in protecting the proper  
 25 functioning of the office, rather than the interest in protecting its occupant, that is of primary  
 26 importance.") Thus, state actors are granted absolute immunity from damages liability in  
 27 suits under § 1983 only for actions taken while performing a duty functionally comparable to  
 28 one for which officials were immune at common law. Miller, 335 F.3d at 897.



Prosecutors are absolutely immune in “initiating a prosecution and in presenting the State’s case.” Id. at 896 (quoting Imbler v. Patchman, 424 U.S. 409, 431 (1976)). These duties include some actions preliminary to the initiation of a prosecution and actions apart from a courtroom, including preparing for and initiation of judicial proceedings or for trial. See Buckley, 509 U.S. at 272-73. For example, a prosecutor was held to have absolute immunity for preparing the information and a motion for an arrest warrant, but not for executing a certification for an arrest warrant that summarized the evidence supporting the charge and in which she personally vouched for the truth of the facts set forth in the certification. Kalina, 522 U.S. at 121, 129. The prosecutor did not have immunity for the executing the certification because she was considered to be acting as a complaining witness rather than a lawyer when she executed the certification under penalty of perjury – no law required that a prosecutor sign the certification and any competent witness could have done it. See id. at 129-30.

Social workers enjoy absolute immunity from damages for performing functions similar to those for which prosecutors are immune. Miller, 335 F.3d at 898. “[S]ocial workers are immune for their ‘actions in investigating and presenting evidence to the dependency court,’ which must realistically under the California procedure include verifying the [dependency] petition.” Beltran v. Santa Clara County, No. 05-16976, slip op. 7565, 7572 (9th Cir. June 25, 2007) (quoting Doe v. Lebbos, 348 F.3d 820, 825 (9th Cir. 2003)). Social workers also are entitled to absolute immunity for signing and verifying custody petitions. Id. at 7573. A social worker’s “actions in allegedly failing to investigate adequately the allegations of abuse and neglect against [the father] and in allegedly fabricating evidence in the dependency petitions she prepared for the court were part of the initiation and pursuit of child dependency proceedings, for which [the social worker] was entitled to absolute immunity.” Lebbos, 348 F.3d at 823. Social workers also have absolute immunity for “the initiation and pursuit of dependency proceedings, including their testimony offered in such proceedings.” Mabe v. San Bernardino County Dept. of Public Social Services, 237 F.3d 1101, 1109 (9th Cir. 2001) (upholding summary judgment for



1 defendants based on allegations that "social workers did not conduct the investigation  
2 properly, were allowed to submit false evidence during the juvenile court proceedings, and  
3 interfered with [mother's] custody rights"). Although some of the Circuit authorities cited by  
4 the parties predate the Supreme Court's 1997 decision in Kalina and 1993 decision in  
5 Buckley and might be of questionable precedential value due to greater focus on a  
6 defendant's title than a defendant's function, the Mabe, Lebbos, Beltran, and Miller cases all  
7 were decided after those Supreme Court cases and noted the need to focus on the function in  
8 deciding whether a social worker had liability for a particular act or omission. With these  
9 cases in mind, the court now considers Azam's claims against the defendants who have  
10 asserted that they are absolutely immune from liability for the acts and omissions alleged by  
11 Azam in his second amended complaint.

12 1. Social Worker Somerby

13 Azam claims that defendant Somerby is liable, and has no immunity, for her  
14 investigation of the dependency case, for presenting allegedly false information and for  
15 failing to provide information to the court that was favorable to Azam. See Opposition, p. 15  
16 ("The actions that Ms. Somerby was taking which has provoked this lawsuit is one of an  
17 investigator, investigating the facts of the case, writing out a report, then submitting the  
18 report to a court of law for prosecution.")

19 Defendant Somerby has absolute immunity for the conduct of which Azam complains  
20 because her alleged misdeeds were done in the performance of work that was analogous to  
21 the function of the prosecutor in initiating and prosecuting a criminal case. The Lebbos and  
22 Mabe cases both found absolute immunity for social workers against claims that they did not  
23 conduct the child dependency investigations properly, claims that they falsified evidence in  
24 the petitions and in their testimony, and claims that they fabricated evidence during the  
25 dependency proceedings. Azam's argument that California Government Code § 820.21 strips  
26 social workers of immunity and therefore precludes absolute immunity for Somerby fails  
27 because that statute does not apply to a § 1983 claim such as his. Beltran, slip op. at 7574-  
28 75. Looking at the nature of the function Somerby performed, the court concludes that

1 Somerby has absolute immunity from the claims in Azam's second amended complaint.

2 2. Attorney Pacheco

3 Azam argues that county counsel Pacheco is liable for her failure to step forward to  
4 alert the court to false statements made by other people. See Opposition, pp. 16-17 ("Even  
5 though she never asserted false facts in a Court of Law[, she] was still under a legal and  
6 ethical duty to inform the Court that false statements of fact were being asserted in the  
7 Court.")

8 Defendant Pacheco is entitled to absolute immunity for the acts and omissions alleged  
9 in Azam's second amended complaint. The acts and omissions of which Azam complained  
10 took place in the courtroom while Pacheco represented the interests of the Social Services  
11 and the County in juvenile court. She performed functions that were critical to the judicial  
12 process in the dependency case. Her duties were comparable to those of a prosecutor who  
13 acted as an advocate for the state in the criminal justice system. She did not act as a  
14 complaining witness and did not give testimony. She has absolute immunity from the claims  
15 in Azam's second amended complaint. Although she was not actually a prosecutor of a  
16 criminal case, the Supreme Court's decisions lead to the conclusion that she had absolute  
17 immunity for her acts of advocacy – whether the acts were affirmative misstatements or  
18 failures to correct other people's misstatements -- during the child dependency proceedings.  
19 Cf. Buckley, 509 U.S. at 270 (absolute immunity was available for prosecutor's participation  
20 in a probable-cause hearing because "[i]mmunity for that action under § 1983 accorded with  
21 the common-law absolute immunity of prosecutors and other attorneys for eliciting false or  
22 defamatory testimony from witnesses or for making false or defamatory statements during,  
23 and related to, judicial proceedings"); Briscoe v. LaHue, 460 U.S. 325, 335 (1983) (quoting  
24 Butz v. Economou, 438 U.S. 478, 512 (1978) (common law recognized that absolute  
25 immunity was necessary "to assure that judges, advocates, and witnesses can perform their  
26 respective functions without harassment or intimidation."))

3. Attorney Lacayo-Valle

Azam argues that attorney Lacayo-Valle is liable because she made known false accusations against him during a hearing on the dependency petition.

Defendant Lacayo-Valle has absolute immunity for her alleged misconduct. During the dependency proceedings, assistant public defender Lacayo-Valle represented the interests of Alina and Nicholas. As representative of the minors' interests, she performed functions that were critical to the judicial process in the dependency case. She did not act as a complaining witness and did not testify. Lacayo-Valle's role did not closely parallel that of a prosecutor, as she was there to protect the child's interests and defendants have not provided authority that this was comparable to the representation of the state's prosecutorial interest, although the appointment of counsel to represent a child's interest may have stemmed originally from the state's *parens patriae* role. Although Lacayo-Valle was not a prosecutor of a criminal case, the Supreme Court's decisions lead to the conclusion that she had absolute immunity for her acts of advocacy during the child dependency proceedings. *Cf. Buckley*, 509 U.S. at 270; *Briscoe*, 460 U.S. at 335.

In light of the determination that each of the individual defendants is entitled to absolute immunity, the court need not decide whether each also is entitled to qualified immunity. The court also does not reach the substantial causation problem for plaintiff: i.e., whether (in light of his conduct that led to the convictions for kidnapping, inflicting corporal injury on a cohabitant, making criminal threats, attempting to induce false testimony, and disobeying a written court order) any of the misrepresentations alleged in this action caused the interference with his familial relations with Alina. Finally, the court does not reach the question whether any of the alleged misrepresentations were in fact true because absolute immunity bars liability even if the alleged misconduct actually occurred.

B. Monell Claim

Azam alleged in his second amended complaint that the Alameda County Department of Social Services, "as part of [its] customs, policy, practice and/or procedure uses an unconstitutional system of allowing [its] employees full control over prosecuting child

1 protective proceedings without regards to the rights of the accused and/or failed to properly  
 2 train, supervise, control, or discipline [its] employees for acts of unlawful/vindictive  
 3 prosecution" and that the County of Alameda failed to properly train, supervise and  
 4 discipline Social Services employees. Second Amended Complaint, ¶¶ 19-20.

5 Local governments are "persons" subject to liability under 42 U.S.C. § 1983 where  
 6 official policy or custom causes a constitutional tort, see Monell v. Dep't of Social Servs.,  
 7 436 U.S. 658, 690 (1978); however, a municipality may not be held vicariously liable for the  
 8 unconstitutional acts of its employees under the theory of respondeat superior, see Board of  
 9 County Comm'rs v. Brown, 520 U.S. 397, 403 (1997); Monell, 436 U.S. at 691. To impose  
 10 municipal liability under § 1983 for a violation of constitutional rights, a plaintiff must show:  
 11 (1) that the plaintiff possessed a constitutional right of which he or she was deprived; (2) that  
 12 the municipality had a policy; (3) that the policy amounted to deliberate indifference to the  
 13 plaintiff's constitutional rights; and (4) that the policy was the moving force behind the  
 14 constitutional violation. See Plumeau v. School Dist. #40 County of Yamhill, 130 F.3d 432,  
 15 438 (9th Cir. 1997).

16 A municipality may be liable for constitutional violations resulting from its failure to  
 17 train its workers where the inadequacy of the training amounts to deliberate indifference to  
 18 the rights of the people with whom the municipality comes into contact. See City of Canton  
 19 v. Harris, 489 U.S. 378, 388 (1989); Van Ort v. Estate of Stanewich, 92 F.3d 831, 835 (9th  
 20 Cir. 1996); Mackinney v. Nielsen, 69 F.3d 1002, 1010 (9th Cir. 1995). Only where a failure  
 21 to train reflects a "'deliberate' or 'conscious' choice" by a municipality can it be thought of as  
 22 a municipality's policy or custom that can support liability under § 1983. See Harris, 489  
 23 U.S. at 389. It is not enough to simply say that a training program represents a policy for  
 24 which the municipality is responsible.

25 That much may be true. The issue in a case like this one, however, is whether that  
 26 training program is adequate; and if it is not, the question becomes whether such  
 27 inadequate training can justifiably be said to represent "city policy." It may seem  
 28 contrary to common sense to assert that a municipality will actually have a policy of  
 not taking reasonable steps to train its employees. But it may happen that in light of  
 the duties assigned to specific officers or employees the need for more or different  
 training is so obvious, and the inadequacy so likely to result in the violation of

1 constitutional rights, that the policymakers of the city can reasonably be said to have  
2 been deliberately indifferent to the need. In that event, the failure to provide proper  
3 training may fairly be said to represent a policy for which the city is responsible, and  
4 for which the city may be held liable if it actually causes injury.

5 Id. at 389-90. The appropriate inquiry on the causation issue is whether the injury would  
6 have been avoided "had the employee been trained under a program that was not deficient in  
7 the identified respect." Id. at 391. But-for causation is not enough; "[r]ather, the policy must  
8 be the proximate cause of the section 1983 injury." Van Ort, 92 F.3d at 837. As in  
9 traditional tort cases, an intervening cause may break the chain of proximate causation in a §  
10 1983 action. See id. (defendant's unforeseeable private acts defeated proximate cause  
11 connecting county's alleged negligence to plaintiffs' injuries). Rigorous standards of  
12 culpability and causation must be applied to ensure that a municipality will not be held liable  
13 solely for the actions of its employee on a prohibited respondeat superior theory. See Board  
14 of County Comm'rs v. Brown, 520 U.S. at 405.

15 The starting point here is to note the limited nature of the liability question. Alameda  
16 County cannot be held liable merely because it employed the other defendants -- that would  
17 be impermissible respondeat superior liability. See Monell, 436 U.S. at 694. Because there  
18 is no potential for respondeat superior liability, Alameda County can avoid liability even if  
19 its employees engaged in unconstitutional behavior if it can show it was not liable on a  
20 policy or failure-to-train theory.

21 Azam has failed to produce any evidence in support of his Monell claim. Azam's  
22 allegations that there was a failure to train are completely lacking in evidentiary support.  
23 See, e.g., Azam Decl., ¶ 89-91. In fact, the reasonable inference to be drawn from Azam's  
24 evidence is that he does not know exactly what Alameda County had done, as even his  
25 statements under oath are cast in "either/or" and "if . . . then" type language. See, e.g., Azam  
26 Decl., ¶ 49 (Social Services "has either failed to properly train its employees in proper  
27 procedures in 'Filing a Petition' or allows its employees to file known false facts in their  
28 Court of Laws"), ¶ 89 ("supervisor should have noticed the numerous false facts contained in  
the report . . . If the supervisor . . . didn't know of the false facts contained in the report

1 before allowing it to be submitted to the Court, then Alameda County has failed to properly  
2 train its employees, and if the supervisor did know of the false facts contained in the report,  
3 then Alameda County has a policy, practice and/or procedure of allowing its employees to  
4 ignore exculpatory evidence, use false evidence and engage in malicious/vindictive  
5 prosecution"), ¶ 90 ("if Alameda County does have 'numerous safeguards' in place, those  
6 safeguards were not applied or extended in my case"). Azam's submission of the Social  
7 Services policy and procedures manual does not help his cause because he failed to provide  
8 any evidence that the policy amounted to deliberate indifference to his constitutional rights or  
9 that the policy was the moving force behind the alleged constitutional violation. And his  
10 dubious reasoning that the fact that the individual defendants allegedly violated his rights  
11 shows a failure to train them or the existence of a policy does not raise a triable issue of fact  
12 on Monell liability; instead, it is an effort to impose the impermissible respondeat superior  
13 liability on the county.


14 Alameda County identified the portions of the record which demonstrate the absence  
15 of a genuine issue of material fact that there was a policy or failure to train that amounted to  
16 deliberate indifference to Azam's constitutional rights and that the policy or failure to train  
17 was the moving force behind the alleged constitutional violation. Azam did not meet his  
18 burden to designate specific facts showing that there is a genuine issue for trial on these  
19 essential elements of his claim. Defendant Alameda County therefore is entitled to judgment  
20 as a matter of law on Azam's second amended complaint.

### 21 CONCLUSION

22 Defendants' motion for summary judgment is GRANTED. (Docket # 29.) Judgment  
23 will be entered in defendants' favor and against plaintiff. The clerk will close the file.

24 IT IS SO ORDERED.

25 Dated: July 11, 2007

26   
27 Marilyn Hall Patel  
28 United States District Judge